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Hearing Date: September 14, 2022
Opposition Date: June 9, 2022
Reply Date: July 13, 2022

Attorneys for Defendants Bank Hapoalim (Switzerland) Ltd. and Bank Hapoalim B.M.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BANK HAPOALIM B.M. and BANK
HAPOALIM (SWITZERLAND) LTD.,

Defendants.

Adv. Pro. No. 12-01216 (CGM)

**DECLARATION OF SCOTT S.
BALBER IN SUPPORT OF
DEFENDANTS' REPLY
MEMORANDUM OF LAW TO
THEIR MOTION TO
DISMISS THE COMPLAINT**

I, Scott S. Balber, hereby declare under penalty of perjury as follows:

1. I am a member of the bar of this Court, an attorney duly licensed and admitted to practice law in the State of New York, and a partner in Herbert Smith Freehills New York LLP, counsel for Defendants Bank Hapoalim (Switzerland) Ltd. (“Hapoalim Switzerland”) and Bank Hapoalim B.M. (“Hapoalim B.M.”) (together, the “Hapoalim Defendants”). I respectfully submit this declaration in support of the Hapoalim Defendants’ reply memorandum of law in support of their motion to dismiss the Complaint (the “Complaint”), filed by Plaintiff Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC (the “Trustee”), in this adversary proceeding (the “Motion”).

2. The purposes of this declaration are to: (a) place before the Court a certain document attached to this declaration, which is referred to in the Hapoalim Defendants’ accompanying reply memorandum of law in support of the Motion (the “Reply Memorandum”); and (b) request that the Court take judicial notice, pursuant to Rule 201(c)(2) of the Federal Rules of Evidence, of certain matters and facts.

The Attached Exhibit

3. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the exhibits attached to the Complaint in *Picard v. Mayer*, Adv. Pro. No. 20-1316.

Request for Judicial Notice

4. Pursuant to Federal Rule of Evidence 201(c)(2), the Hapoalim Defendants respectfully request that the Court take judicial notice of the document attached hereto as **Exhibit 14** for the purpose of considering that document in adjudicating the Motion. The grounds for this request, including applicable precedents, are set forth in defendants opening memorandum of law

in support of the Motion (*see* Dkt. No. 115, at 2 n.6). The Hapoalim Defendants request that the Court take judicial notice of the fact of the filing of this document.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2022 in New York, New York.

/s/ Scott S. Balber

Scott S. Balber